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6 DEC 1978

MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM: John F. Blake
Deputy Director for Administration

SUBJECT: IPS Report on Impact of the FOIA and Privacy Act

In response to your request at the 5 December Goals Management Conference, attached hereto is a copy of the paper recently prepared by [redacted], Acting Chief, STATINTL Information and Privacy Staff, entitled "Impact on the Agency of the Freedom of Information Act, the Privacy Act, and Mandatory Classification Review." While the paper could use some polish, I believe it effectively tells the FOIA and Privacy Act story.

John F. Blake

Attachment: a/s

STATINTL

AI/DDA:[redacted]:ydc (5 Dec 78)
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SEP 1978

IMPACT ON THE AGENCY OF THE FREEDOM OF INFORMATION ACT, THE PRIVACY ACT, AND MANDATORY CLASSIFICATION REVIEW

1. Historical Background, Pre-1975

The Freedom of Information Act was passed in 1966 and took effect the following year. It established the right of the public, citizens or aliens, to demand access to "identifiable records." Federal agencies were required to publish in the Federal Register the procedures to follow in requesting records. To the extent authorized by statute, agencies were permitted to assess fees for services rendered. Records were to be made "promptly available" to requesters, but no time limits were specified. If documents were withheld under one or more of the nine exemptions of the Act, the requester could bring suit in a U.S. district court and the burden was on the agency to sustain its action.

One of the exemptions of the Freedom of Information Act, subsection (b)(1), exempted "matters specifically required by Executive order to be kept secret in the interest of national defense or foreign policy"--i.e., all classified documents. FOIAb5 FOIAb5 Another exemption, subsection (b)(3), covered all matters "specifically exempted from disclosure by statute." [redacted] These two exemptions, (b)(1) and (b)(3), pretty well blanketed the records of the CIA and, consequently, the Freedom of Information Act initially had little or no impact on the Agency.

With respect to national security classified records, a key decision was enunciated by the Supreme Court on 22 January 1973 in the case of EPA v. Mink. Patsy T. Mink (Dem., Hawaii) and 32 congressional colleagues sued to obtain access to certain EPA records denied them on the basis of exemption (b)(1) of the Act. The issue before the Court was whether the presence of a classification marking on a document was sufficient cause for denial, or whether the court should go into the question of whether the classification was warranted. The Supreme Court ruled in this instance that while an agency should examine classified documents before invoking exemption (b)(1), it was not the intent of the Congress that the courts should rule on whether classification was justified. An affidavit from the agency to the court was all that was required to establish the classified status of documents. Thus, national security classified records could be denied to the

public without fear of the denial being overruled through litigation. This opinion, as much as any other single factor, led to the 1974 amendment of the Freedom of Information Act.

While the Agency received virtually no Freedom of Information requests until the 1974 amendments took effect in February 1975, a number of requests for records were received under the provisions of Sec. 5(C) of Executive Order 11652, which became effective on 1 June 1972. Among its other provisions, this Order required the mandatory classification review of any records, 10 years old or older, requested by a member of the public, citizen or alien, or by another Government agency, which were described accurately enough to permit their identification, retrieval, and review without undue burden. The records could be withheld only if, under the criteria of Sec. 5(B) of the Order, they qualified for exemption from the General Declassification Schedule established by Executive Order 11652. An Interagency Classification Review Committee was set up under the National Security Council to oversee implementation of the Order, and one of the functions of this Committee was to hear appeals from denials by Departmental review committees. (CIA's review committee, established in compliance with the Order, was named the Information Review Committee. It still exists today, but its membership was upgraded to the Deputy Director level when the Freedom of Information Act was amended in late 1974.) Requests from the public were to be answered within 30 days, but requesters had to wait an additional 30 days before appealing because of the lack of response. Full or partial denials could be appealed to the Departmental review committee, which was supposed to act on appeals within 30 days.

As soon as Executive Order 11652 took effect, journalists submitted to the CIA what appeared to be "test requests." The requests usually involved several categories of obviously sensitive materials, and the requesters were quick to take advantage of their right to administrative appeal. A number of these initial requests were so broadly phrased that they had to be rejected as lacking in specificity. After the initial flurry of activity, the volume of requests received dropped off, but over the long run there was a steady increase in the number of classification review requests logged. A high percentage of the requests processed under Executive Order 11652 has consisted of referrals from Presidential libraries, where researchers are apprised of the existence of classified records pertinent to their research interests and given assistance in requesting their mandatory classification review. (Under the provisions of the Presidential Libraries Act of 1955, the holdings of the libraries are "donated" materials, rather than public records. As such, the General Services

Administration has held that these records are not subject to the Freedom of Information Act. Access to them is governed by the donor's restrictions and by mandatory classification review procedures.) Statistics showing request activity under Executive Order 11652 are presented below. It should be pointed out that many of the documents sent to the Agency for review are not of CIA origin. Rather, they are often White House papers or third-agency documents which must be reviewed by the CIA because they concern, in whole or in part, intelligence matters.

	1972	1973	1974	1975	1976	1977	1978 (thru 30 Aug)
Requests received	30	110	191	232	374	568	284
Granted in full	1	50	89	63	81	156	47
Granted in part	6	19	47	88	220	268	71
Denied in full	15	18	23	28	37	101	17
Miscellaneous	0	0	0	5	6	11	12

2. 1974 Amendments to the Freedom of Information Act

In 1974, both the Senate and the House passed by overwhelming majorities essentially similar bills to amend the Freedom of Information Act. A conference committee was formed, and it reported out a modified version of the House bill, H.R. 12471. It easily passed in both houses, but the bill was vetoed by then President Ford. President Ford objected to the unrealistic time periods allowed for processing requests, appeals, and court cases. He also objected to changes in the exemption regarding investigatory files, i.e., subsection (b)(7). Moreover, he maintained that the courts should be required to uphold the classified status of records if there was a reasonable basis for such classification. Upon its return from recess, however, the Congress overrode the veto and the amendments took effect 90 days after enactment, 19 February 1975.

Considerable pressure had been exerted upon the Congress to liberalize the Freedom of Information Act. Requesters, particularly representatives of the media, complained that Federal agencies had succeeded in frustrating the intent of the Act through delaying tactics, the unreasonable assessment of fees, and the wholesale invoking of exemptions. Moreover, the post-Watergate mood of the country called for greater openness in Government. Some of the principal features of the Act, as amended, are:

a. Agencies have 10 working days to decide whether to comply with a request, and 20 working days to respond to appeals. Upon notification to the requester, agencies may invoke an extension of 10 working days

to the time allowed for processing either the request or the appeal (but not both). The only circumstances justifying such an extension are that the records are stored in remote locations, that the records are are voluminous, and/or that intra- or interagency clearances are required.

b. The failure of an agency to meet deadlines permits the requester to go directly to court. The court, however, if circumstances warrant, may delay action on the suit until the agency has had sufficient time to complete the processing of the request.

c. The requester must be notified of his appeal rights each time a denial occurs, along with the names and titles of the agency officials responsible for the denial. If the denials are upheld upon appeal, the responsible officials must again be identified and the appellant must be apprised of his recourse to the courts.

d. Only the direct costs of searching for records and copying them can be assessed the requesters. At the discretion of the agency, fees are to be waived if release of the records sought primarily benefits the general public.

e. The requesters need only to "reasonably" describe the records. (Before the amendments, the Act referred to "identifiable records.")

f. A complainant can file suit in the district where he resides, has a place of business, or in the District of Columbia. Agencies have only 30 days to serve an answer to compaints brought before the courts. The court can subpoena records and can rule, after in camera inspection, whether the classification of a document is warranted under the criteria established by Executive Order 11652 or whether other claimed exemptions were correctly asserted. Any reasonably segregable portion of a document not falling under the exemptions of the Act shall be provided to the requester. Furthermore, if the complainant substantially prevails, the court can require the Government to pay his attorney's fees and other litigation costs.

g. If the court has reason to believe that an officer responsible for withholding documents acted in an arbitrary or capricious manner, it can require the Civil Service Commission, to conduct an investigation.

The Civil Service Commission, in turn, can require the agency to take disciplinary action against the officer.

h. Annual reports must be made to the Congress by each agency on its administration of the Act.

3. The Privacy Act of 1974

The Privacy Act, which became effective on 27 September 1975, is in a sense a companion law to the Freedom of Information Act. Its enactment was the result of concern over the amount of personal information collected by Federal agencies and the ways in which this information was being utilized. The basic principles of the Act are:

a. There should be no secret information systems.

b. There should be no unforeseen use of information that an individual supplies about himself without his consent.

c. An individual should have access to the records that are kept about himself.

d. Information collected concerning an individual should be collected directly from him, whenever feasible, and then only when it is necessary, and the information should not be retained unless it is accurate, timely, and relevant.

The Privacy Act differs from the Freedom of Information Act in two important respects--it applies solely to personally identifiable information, and only U.S. citizens and permanent resident aliens are entitled to its benefits. Subsection (j)(1) of the Act afforded the CIA the possibility of exempting itself from many of the provisions of the Act, including the provisions whereby individuals can request access to records pertaining to themselves and, if the accuracy of these records is in question, request their amendment or expungement. However, the Agency did not fully avail itself of this subsection, limiting the application of (j)(1) to the exemption of such categories of information as intelligence sources and methods and polygraph records. (Even if the CIA had exempted itself from the access provisions of the Privacy Act, individuals could request the same records under the Freedom of Information Act.) Another difference between the Privacy Act and the Freedom of Information Act is that no search fees may be charged for requests processed under the Privacy Act. The CIA, while permitted to do so, does not assess copying fees either.

Under the Privacy Act, the Agency is required to publish in the Federal Register descriptions of those systems of records which contain information on U.S. citizens and permanent resident aliens and which are indexed by personal name or some equivalent identifier. Steps have to be taken to ensure that access to personal information is limited to those with a need to know, and records must be maintained of all disclosures. Except for routine uses covered in the Agency's implementing regulations, and other circumstances specifically covered in the law, personal information cannot be disclosed to a third party without the express consent of the person concerned. To the extent possible, information is to be collected directly from the subject individual. Whenever the information is being used in making a determination about the individual, to the degree practicable, steps must be taken to ensure that the information is accurate, relevant, timely, and complete. In addition, no records may be maintained describing how any individual exercises rights guaranteed by the First Amendment.

When an individual requests access to records under the Privacy Act, we first require from him proof that he is who he purports to be--a notarized statement of identity which includes his date and place of birth. Unlike the Freedom of Information Act, there is no statutory deadline for responding to access requests, but guidelines promulgated by the Office of Management and Budget call for answering such requests within 30 days. The exemptions are roughly equivalent to those of the Freedom of Information Act. For example, classified information is withheld under subsection (k)(1); sources and methods are protected under (j)(1); the personal privacy of others is covered by subsection (b); and the identity of sources utilized in compiling investigatory reports is afforded protection under subsection (k)(5).

4. CIA's Experience in Handling Freedom of Information and Privacy Act Requests, Appeals, and Litigation

A few rather complex requests, notably those submitted by Morton Halperin, were received shortly after the amended Freedom of Information Act took effect on 19 February 1975. These were apparently intended as "test" cases by the requesters. Requests were not received in large volume, however, until late March of that year. Bella Abzug, then a Member of Congress, had been provided, at her request, copies of records pertaining to her which the Agency had collected, including intercepted mail. Ms. Abzug was very indignant over what she regarded as a gross invasion of her personal privacy, and she had a heated exchange with Director William Colby over

the matter. Much publicity resulted, and the Agency began to receive a large number of requests from other persons who wished to know whether the CIA had established files on them. (Around that time, it was decided by Mr. Colby that no fees would be charged for requests from U.S. citizens for their personal files.) The volume of requests for personal files rose dramatically in July, August, and September of 1975, with approximately 200 letters a day coming in on peak days. This development can be attributed to a campaign by the Center for Constitutional Government, which flooded the country with form letters addressed to the CIA and urged everyone to write to "Big Brother" and to send copies of the Agency's replies to the Center. There was no way that the Agency could cope with this deluge of requests, and a processing backlog developed that persists with us to this day. Requests dropped off for some reason during 1976, and for a time we managed to reduce the unprocessed backlog to 1,000 cases. However, the backlog increased during 1977 at the rate of about 22 cases per week, and although the volume has declined somewhat during 1978, the backlog has continued to rise this year by approximately 16 cases per week. We are currently logging an average of about 86 new requests (Freedom of Information, Privacy, and Executive Order) a week, and available resources enable us to answer only about 70 a week. The total backlog of unprocessed requests now amounts to over 2,700 cases, and the appeals backlog exceeds 300 cases.

Other than requests for personal files--and these requests are usually now processed under the Privacy Act rather than the Freedom of Information Act--the types of requests we receive can often be predicted from the previous week's newspaper headlines. In addition, there have been other organized campaigns to encourage Freedom of Information requests, with the CIA as the target. It should be emphasized that, although foreigners have the right to use the Act, most of the requests have been submitted by U.S. citizens. We do not maintain statistics on the citizenship of requesters--indeed, this is often difficult to determine; however, an analysis of the first 468 Freedom of Information Act requests logged during 1978 revealed that only 16 of them (3.4 percent) came from persons who were definitely neither U.S. citizens nor permanent resident aliens. We are unable to recall having received any requests from Communist China or Sovbloc countries, but, of course, such requests could conceivably have come to the Agency through intermediaries.

Some of the most popular topics for requests have been:

a. Unidentified Flying Objects (UFOs). (There are several organizations of UFO afficionados, whose members keep in close contact with one another.)

b. CIA's past and present relationships with academia. (The American Civil Liberties Union and the Center for National Security Studies have encouraged such requests.)

c. The assassination of John F. Kennedy.

d. Past programs of the Agency in the field of drug and behavioral control experimentation. (In addition, we have received a large number of Privacy Act requests from persons who suspect that they were the subjects of Agency-sponsored tests.)

e. CIA's past and present relationships with state and local law enforcement agencies.

f. Persons missing in action in Southeast Asia. (The next-of-kin of MIAs are using the Freedom of Information Act to delay status hearings which would change the status of the MIAs to that of presumed killed in action. The relatives have a financial stake in the matter.)

g. Copies of procurement contracts. (Many of these requests have concerned EDP-related contracts. Some persons regard such requests as a form of industrial espionage.)

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h. [redacted]

i. Personal files of prisoners. (These are processed under the Privacy Act, and we seldom have any "hits." The volume is large, however.)

j. The use of newsmen, missionaries, etc., as sources.

k. Covert action projects, particularly of the political action type.

1. OSS operations. (Everybody seems to be writing a book on the OSS.)

m. Foreign economic, financial, and trade developments.

n. Biographical data on foreign leaders.

o. Improper payments by U.S. industrial firms to foreigners.

p. CIA records on U.S. domestic organizations.

A breakdown of the number of Freedom of Information and Privacy Act requests processed since the start of 1975 is provided below.

	1975	1976	1977	1978 (thru 30 Aug)
FOIA				
Requests received	6609	761	1252	1126
Granted in full	300	148	167	113
Granted in part	428	562	241	189
Denied in full	174	122	95	92
Miscellaneous*	4577	523	269	483
PA				
Requests received	552	2356	3023	1578
Granted in full	4	154	195	131
Granted in part	3	404	520	314
Denied in full	0	56	124	76
Miscellaneous*	189	1500	1559	873

A large number of other requests (ca. 4,750), principally requests for access to personal records, have been received since 1975 but never processed because of the failure of the requesters to provide the information needed to establish their identity, or other data. Although never fully processed, each of these unlogged requests has required, at the minimum, the establishment of a case file and at least one letter of response, thereby adding to our workload.

*Miscellaneous category includes "no record available" and "no CIA record available" responses; canceled and withdrawn requests; requests referred to other agencies; and requests appealed due to lack of response.

5. Agency Organization, Manpower Costs, and Fees Collected

The Agency program for administering the Acts is decentralized, reflecting the decentralized nature of our files. The Information Review Committee, which is chaired by the Deputy Director for Administration, sets overall Agency policy and rules on all appeals. The Information and Privacy Staff, which is located organizationally within the Office of the DDA, is the focal point for the receipt of requests from the public, coordination of their processing, the preparation of replies, and the maintenance of records of all transactions. Each of the Directorates has a person who serves as Directorate Freedom of Information officer, and, within the Directorates, each major component (office or division) has its own Freedom of Information officer (some full-time; others part-time). The program within the Operations Directorate is somewhat more centralized than is the case with the other Directorates. All contacts with the Information and Privacy Staff are through the Freedom and Privacy Group of the Information Management Staff, whereas, in the other Directorates, the Information and Privacy Staff usually deals directly with offices below the Directorate level. In addition to the above, there is a Freedom of Information officer in the Office of the DCI and an officer for each of the major components within that Office. The Office of General Council has an entire division, the Freedom of Information and Privacy Law Division, working full-time on appeals and litigation. Requests involving Intelligence Community Staff records are processed through the CIA mechanism, as well, and the IC Staff has appointed a Freedom of Information Officer to serve as the contact point.

There are about 65-70 persons in the Agency who are employed on a full-time basis in complying with the demands of the Freedom of Information Act, the Privacy Act, and mandatory classification review requests. Hundreds of other Agency employees, however, get involved in the programs on a part-time, ad hoc basis--conducting searches, reviewing records for releasability, etc. According to manpower statistics collected on a weekly basis during 1977, a total of 192,800 man-hours was expended in processing requests, appeals, and litigation--the equivalent of approximately 109 man-years. The manpower commitment thus far in 1978 has run somewhat higher, but it is believed that we have just about reached the limit of the resources that can be employed without detracting from our ability to carry out our foreign intelligence mission.

A great deal of manpower can be expended on individual requests, particularly if they go into the appeal and/or litigation stages. For example, we estimate that we have

already devoted 11.5 man-years to processing a request from John D. Marks, now in litigation, for records pertaining to MKULTRA and other drug/behavior modification programs. A request from David Belin (others have submitted the same request) for copies of all records dealing with John F. Kennedy's assassination has already cost us some 8.75 man-years of labor.

We estimate that the manpower costs for 1975 amounted to $1,400,000; for 1976, $2,000,000; and for 1977, $2,377,000. Almost half of these sums can be attributed to the Freedom of Information Act alone. Although considerably less than half of our total requests are handled under the Freedom of Information Act, these requests tend to be more complex and are more likely to lead to expensive litigation. By contrast, very little has been collected in the way of fees. As was pointed out earlier in this paper, there are no charges for processing Privacy Act requests and, in addition, we are required to waive or reduce fees whenever it is in the public interest to do so. Only $1,867 was collected in 1975; $10,035 in 1976; and $16,439 in 1977. We anticipate that the total fees collected in 1978 will fall below last year's figure.

There are other costs, such as office space, supplies, equipment rentals, and computer support, which we have not attempted to calculate, but these would be minor in comparison with our personnel costs. Fees collected from requesters are turned over to the Treasury Department, and the total cost of administering these programs must be absorbed by the Agency within overall operating funds.

There are severe limitations on the costs that we can pass on to requesters. As noted earlier, no charge is made for requests processed under the Privacy Act, and, inasmuch as most of our mandatory classification review requests are referrals from other Federal agencies, fees are seldom collected by our Agency for them either. Under the Freedom of Information Act, we are authorized to levy charges only for copying costs and for the time spent in locating relevant documents. No fees may be charged for the far more time-consuming and costly process of reviewing and sanitizing documents. Until such time that the fee structure takes into account actual processing costs, we are unlikely to see any significant

drop in the number of requests, and large amounts of the taxpayers' money will continue to be spent reviewing and sanitizing material for release to a relatively small number of individuals.

In the meantime, the fee structure which we do have affords some protection against capricious "fishing expeditions" and omnibus-type queries which would be extremely costly to process. For example, during the period 1 January 1977 through 8 March 1978, 67 Freedom of Information were canceled or withdrawn because of the refusal of requesters to agree to the payment of reasonable search and copying fees. Although not large, the number provides some indication that fees cause requesters to exercise restraint in pursuing their informational needs. Moreover, we must assume that many others are deterred from submitting requests because they are aware that fees may be charged. We estimate that if our current authorization to charge fees were to be drastically limited through judicial interpretation or legislative amendment of the Act, the volume of requests might very well double. We do, of course, voluntarily waive fees, in whole or in part, when the subject matter sought is clearly of public interest and it is our judgment that release of the material would significantly benefit the general public. It is not our policy, however, to automatically waive fees whenever the requester states his intention to publish the results of his research, as many of our critics contend that we should. Our stand in this regard is weakened somewhat by the divergent policies followed by other Federal agencies. It is our understanding, for example, that the Department of Defense always waives fees when the requester is a newsman.

6. Problems for the Agency in Complying With the Law

a. It has been impossible to meet the deadlines for responses. Requests are generally processed on a first-in, first-out basis and, in view of our huge backlog, the statutory time for responding to Freedom of Information requests usually has elapsed before we can even commence searching for the documents requested.

b. Even if the processing backlog did not exist, it would be very difficult to meet the statutory deadlines. Because of the specialized missions of various Agency components and the security requirement for compartmentalization, the CIA, unlike many other agencies, has no central file or index to its holdings. A search for "all" information on a given topic or topics may therefore entail the searching of several file systems, under different command

authorities and with varying degrees of retrieval capabilities. Our date of completion of the search is governed by the time required to thoroughly search the least efficient of these systems. (By way of contrast, it is our understanding that a search of the FBI's central files seldom takes more than 10 minutes.)

c. The search task is further complicated by the fact that many of the Agency's records have become inactive and, as an economy measure, are stored in a records center. If "hits" made during the index search phase relate to such records, a not infrequent occurrence, it takes from two to three days to retrieve them from remote storage in order that their relevance can be determined, thereby delaying the process.

d. Searches in one component will often surface records originated by, or of subject-matter interest to, other CIA components or other departments and agencies. The time required for reproduction and referral of such documents to the organization having cognizance in order that they can be reviewed further delays completion of processing. This problem, of course, is not unique to the CIA, but an unusually large proportion of our reports are jointly produced or contain inputs provided by other agencies.

e. The biggest single factor in slowing down our response times is the absolute necessity that all records be carefully reviewed before release. At best, the review of classified intelligence documents is a time-consuming process. A single request can involve the review of hundreds or thousands of documents and, depending upon the subject matter, there are a limited number of experts qualified to perform this task. Often, the review must be done by senior officers and managers, with numerous other demands, often more urgent, placed upon their time. Experience has taught us, also, that a very careful review by at least two levels of authority is required to ensure that sensitive information is not inadvertently released. Mistakes, needless to say, would be costly. Unless our sources are afforded protection from disclosure, they could lose confidence in our ability to maintain secrets, thereby impairing the Agency's ability to collect the foreign intelligence essential to national survival in this atomic age.

f. Foreign nationals and other persons holding views inimical to U.S. national interests can and do seek information from the CIA under the Freedom of Information Act. This is well-known throughout the world. Compliance with their requests and the resultant publicity given to any information released appears to have had the cumulative effect of leading persons or organizations who were once willing to cooperate with the Agency to question whether they can safely continue their collaboration without the risk of exposure. Compared with unauthorized relevations by former employees and others, very little sensitive intelligence information has been inadvertently released through Freedom of Information channels. Yet the possibility of such releases exists, and the Operations Directorate can document specific instances of the loss of real or potential sources where the Freedom of Information Act was in part responsible. There is, accordingly, widespread concern within the Agency over what is widely, and not wholly incorrectly, perceived by our information sources to be a problem for the Agency in protecting its legitimate secrets.

g. Despite the expense involved in processing Freedom of Information requests, the public is not always served by the information we are able to release. Some requests are for records concerning sensitive covert operations, the existence of which we are not even free to acknowledge. No information is released, but Agency manpower is diverted from other tasks, particularly so if the denials are appealed or litigated. In other instances, compliance with the Act has led to the release of fragmentary and sometimes inaccurate raw intelligence data, which, rather than enlightening the public, results in a misinterpretation of what actually occurred. More accurate reports often had to be withheld to protect sensitive sources or collection systems.

7. Legislative Relief

The Agency has long been committed to a policy of openness believed to be unprecedented for a foreign intelligence agency. For example, the Agency's analytical products, to the degree consistent with our obligation to protect intelligence sources and methods, have often been made available to the public on a voluntary basis. Numerous unclassified monographs, reference aids, maps, and translations of the foreign media

are released by the CIA each year through the distribution facilities of the Library of Congress, the Government Printing Office, and the Department of Commerce. Moreover, there has been no serious objection on the part of the Agency to complying with the access provisions of the Privacy Act, burdensome though they may be. Indeed, subsection (j)(1) of the Privacy Act contains the authority for exemption of the Agency from many provisions of the Act if we saw fit to do so. Similarly, compliance with the requirement for the mandatory classification review of 10-year-old records pursuant to Executive Order 11652 (almost identical provisions are contained in Executive Order 12065, which supersedes Executive Order 11652 on 1 December 1978) is not so troublesome as to be unacceptable. However, the burden imposed on the CIA by compliance with the Freedom of Information Act as it now stands, and the associated risks to our intelligence sources and methods, have been brought to the attention of our oversight committees and individual Members of Congress. While we take no issue with the concept that the American public has a right to know what its Government is doing, we do submit that in the case of foreign intelligence records the public benefits deriving from the Act have not been commensurate with the costs. As pointed out earlier in this paper, because of our statutory mandate to withhold protected information, only a very small portion of the information requested of us under the Freedom of Information Act can be released. Thus, in most cases, a search for and review of thousands of pages of documents relating to a particular request might result in the release of only a few pages of sanitized, disjointed information which neither truly responds to the requester's interests nor satisfies the intent of the Congress. And the price to the taxpayer for this dubious service is enormous. At the same time, the Agency's work suffers from the drain on its resources, the chilling effect that the Act has had on cooperating liaison services, the fears of agents overseas of exposure, and the concern of various U.S. corporations and CIA contractors that their activities with or on behalf of the CIA might become public.

Clearly, the CIA and the other foreign intelligence agencies of the U.S. Government are in a distinctly different position vis-a-vis the Freedom of Information Act than are other departments and agencies, and a good case could be made for total exemption from the Act, or, if that is impossible, partial relief. Critics will be sure to charge that the CIA seeks only to cover up continued illegal domestic surveillance operations and other abuses. We maintain, however, that all of our old "dirty linen" has by now been thoroughly exposed to public scrutiny. The public's interest in preventing future abuses or illegalities by U.S. intelligence organizations

will be adequately served by the elaborate oversight mechanisms that have been established in the Agency, the Intelligence Community, the White House, and the Congress. There is no compelling need, therefore, for the Freedom of Information Act to be a means of monitoring Agency activities.

To date, the Agency has not submitted any formal legislative proposals to the Office of Management and Budget. We have, however, raised the question of amendments in correspondence with Members of Congress, including Senator Birch Bayh, Congressman Bill D. Burlison, and Congressman Samuel L. Devine. The latter subsequently introduced a bill in the House of Representatives that incorporated certain aspects of the suggestions contained in our letter to him. The questions that we have posed have dealt primarily with procedural changes and fees, although the need for broader exemptions for raw intelligence reports and operational data was also mentioned. The questions were as follows:

a. Should the benefits of the Freedom of Information Act, like those of the Privacy Act, be available to U.S. citizens and permanent resident aliens only?

b. Should the mandatory response time on initial processing of requests be changed from the present 10 working days to 30 calendar days, plus an additional week for every 100 pages, or fraction thereof, of material requiring a review? At the same time, should the mandatory response time on appeals be changed from the present 20 working days to 60 calendar days, plus two additional weeks for every 100 pages, or fraction thereof, requiring a second review?

c. Should agencies be permitted to charge requesters for review time as well as search time?

d. Should requests be limited to one specific subject of manageable proportions rather than permitting blanket omnibus-type requests which cover a wide date span and a variety of topics?

If the above suggestions were acted upon by the Congress, the Agency's problems in administering the Freedom of Information Act would be somewhat ameliorated, but not to any great extent. Proposal a. would be difficult to enforce inasmuch as it would be no problem for a foreigner to arrange for a U.S. citizen to act as his agent. Even with the more reasonable response deadlines suggested in proposal b., we would still be unable to comply as long as the current processing backlogs

exist. Proposal c. would be very helpful if enacted, but requesters would still have the right to ask that all fees be waived in the public interest. (There has been one court case in which our refusal to waive fees was overruled by the judge.) Proposal d. would provide a basis for not acting on certain requests, although it would be possible to finesse the requirement by merely submitting several related requests in lieu of one complex request.

The Office of Legislative Counsel is currently endeavoring to draft an amendment to the Freedom of Information Act for presentation to the appropriate committees of the Congress after clearance by the Office of Managment and Budget. The Information Review Committee, through its Working Group, is assisting in this matter. The major thrust of the amendment proposal will be either to list certain categories of foreign intelligence information (e.g., covert operations, raw intelligence reports) as not being subject to the provisions of the Act, or, conversely, to state that all foreign intelligence records are not subject to the Act except for specified categories (e.g., finished intelligence). The latter approach has certain merit in that it seems positive, rather than negative. Moreover, in any attempt to list types of information not subject to the Act, there is always the danger that sensitive categories may be overlooked. Another decision to be made is whether the draft amendment should apply only to CIA records or to all Intelligence Community records. Many of the problems that the CIA has encountered in administering the Freedom of Information Act have undoubtedly been experienced by other intelligence agencies as well. It might also be better for the CIA's public image if it were not singled out.

All indications are that the prospects for obtaining relief though amendments to the Freedom of Information Act are not bright. The suggestion has been made that we might be able to achieve the same results through appropriate charter legislation provisions, with the charter legislation then providing the basis for invoking exemption (b)(3) of the Freedom of Information Act. The feasibility of this approach should be explored. We could presumably expect a more sympathetic hearing from our oversight committees than from the committees having jurisdiction over Freedom of Information legislation.